

REMARKS

Claims 1, 3, 4, 6, 8, and 9 are pending in the application. Claims 5, 10, 11, 25 have been canceled. Claims 1, 6, 8 and 9 have been amended. Solely to expedite prosecution, claim 1 has been amended to incorporate the limitations of claims 5, 10, 11 and 25; and further amended to remove the term “substantially”. Claim 6, 8 and 9 have been amended to depend on claim 1, as opposed to claim 5. No new matter has been added.

The claim amendments and cancellations should not be construed to be an acquiescence to any of the claim rejections. Rather, the amendments and cancellations to the claims are being made solely to expedite the prosecution of the above-identified application. The Applicants expressly reserve the right to further prosecute claims drawn to canceled or deleted subject matter in subsequent patent applications claiming the benefit of priority to the instant application (35 USC § 120).

RESPONSE TO CLAIM REJECTIONS UNDER 35 USC § 102(b)/103(a)

Claims 1, 3-6, 8-11 and 25 are rejected as being anticipated by, or in the alternative obvious in light of, Smak (WO 00/00014). The Applicants respectfully traverse.

Applicants again respectfully assert that Smak does not teach a tray wherein each cavity is substantially symmetrically open-ended at both ends. However, because the Examiner asserts that the limitation “substantially” is an indefinite structural limitation, it has been removed from the claim. In light of the Examiner’s assertion as to the effect of the term “substantially,” no change in the scope of claim 1 is intended by this amendment. Support for this amendment can be found throughout the application, including, for example, Figure 3 which show a tray with cavities which are symmetrically open-ended at both ends. In addition, as noted above, claims 5, 10, 11 and 25 have been canceled and their limitations incorporated into claim 1.

Because the pending claims require cavities which are symmetrically at both ends, in addition to having rectangular ribs which are longitudinally positioned along the walls of the

cavity, are parallel to the walls of the cavity, and extend along the entire length of the walls of the cavity, the Applicants respectfully assert that Smak does not anticipate any of the pending claims. Accordingly, the Applicants respectfully request withdrawal of the § 102(b) rejections of the pending based on the Smak reference.

As to the Examiner's assertion that the pending claims are obvious in light of Smak, the Applicants respectfully disagree.

Importantly, the Applicants respectfully remind the Examiner that when determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103(a) is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

The Examiner asserts that: "it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the cavities of Smak with the well-known rectangular rib shape as either a means of *reinforcing the tray/cavities* or to have utilized the claimed rib shape as *a means to retain the artificial growth plug*" (Office Action, page 5, emphasis added). The italicized language appears to be the Examiner's statement of the rationale for modifying Smak. However, the Examiner has not shown how the any reference or combination of references suggests that features selected from them should be combined in the manner that Applicants discovered.

In fact, Smak appears not to have appreciated the advantages of making trays with rectangular ribs when he filed his patent application, despite the Examiner's assertion that rectangular ribs has been known in the art as early as 1964 (US Design Patent D198,591). The Applicants respectfully assert that if the use of rectangular ribs in the manner disclosed by the Applicant had been obvious, Smak would have made it and thereby would have obtained the advantage that Applicants now have contributed. The fact that Smak did not disclose a trays such as those claimed supports the Applicants' assertion that the claimed trays were not obvious to one of skill in the art. Accordingly, the Applicants respectfully request withdrawal of the § 103(a) rejections of the pending based on the Smak reference.

FEEES

Apart from the extension of time requested herewith, the Applicants believe that there are no additional fees required in connection with the filing of this paper. Nevertheless, the Director is hereby authorized to charge any additional required fee to our Deposit Account, **No. 06-1448**, reference **RCX-022.01**.

CONCLUSION

In view of the above amendment and remarks, it is believed that the pending claims are in condition for allowance. The Applicants respectfully request reconsideration and withdrawal of the pending rejections. If a telephone conversation with Applicants' Agent would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned.

Respectfully submitted,
FOLEY HOAG LLP

/Jacob I. Wasserman/

Jacob I. Wasserman, Ph.D.
Registration No. 56,929
Agent for Applicants

Patent Group
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210

(617) 832-1000
(617) 832-7000 (FAX)

Date: April 15, 2008